IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.680 OF 2006

M/s.Iran National Airlines
Sunder Mahal, Marine Drive,
Mumbai - 400 020 .. Petitioner.

V/s.

1. Union of India, through its Officer, 243 C, Income Tax Building, Churchgare, Mumbai

2. The Joint Secretary, Government of India, Ministry of Finance, Department of Revenue, 14, Hudco Vishala Bldg., 'B' Wing, 6th Floor, Bhikaji Cama Palace, New Delhi - 110 066.

3. The Deputy Commissioner of Customs, Foreign Travel Tax Dept., Sahar International Airport, Mumbai .. Respondents.

Mr.Ashok Singh with Ms.Sushama Joshi i/b. M/s.Haresh Mehta & Co. for the petitioner.

Mr.S.M. Shah with Mr.A.S. Rao for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 10TH MARCH, 2006.

P.C. :

Heard Mr.Ashok Singh, the learned counsel for the petitioner.

2. The learned counsel for the petitioner did not dispute that there was default by the petitioner

in filing the Foreign Travel Tax Returns (FTT) and the payments but according to him, the default was technical and for such technical default, the penalty has been imposed on very higher side. He would submit that there was no mens-rea and in any case the order passed by the Assistant Commissioner of Customs is beyond the order of remand and, therefore, unsustainable.

3. We considered the submissions of the learned counsel for the petitioner.

4. The petitioner is air-carrier and is owned and managed by the Islamic Republic of Iran.

5. The following statement depicts the details of Foreign Travel Tax returns filed by the petitioner and the payment made.

Sr. No.	FTT Returns pertaining to month	Date of submission of FTT	Delay in submission (No. of days)	Challan No. Date of payment	Amount of FTT paid / Recd.	Delay in payment (days)	Interest @ 20% on delayed payment	short payment of FTT	interest of short payment	remarks
1.	Aug 94	06.10.94	6	207/3.10.94	223500	3	367/-	-	-	
2.	Oct.94	05.12.94	5	597/2.12.94	174600	2	191/-	-	-	
3.	Nov.94	03.01.95	4	33/30.12.94	161400	-	-	-	-	
4.	Dec.94	31.01.95	1	5531/30.1.95	249000	-	-	-	-	
5.	Mar.96	06.05.96	6	60/2.5.96	393300	2	431/-	-	-	
6.	Apr.96	03.06.96	4	99/3.6.96	349200	4	765/-	-	-	
7.	May.96	01.07.96	1	9/1.7.96	312600	1	171/-	-	-	
8.	Jun.96	01.08.96	2	2587/31.7.96	246000	1	135/-	-	-	

9.	July.96	02.09.96	3	7/2.9.96	162300	3	267/-	-	-
10.	Aug.96	10.10.96	10	353/8.10.96	279900	8	1227/-	-	-
11.	Sept.96	07.11.96	8	98/2.11.96	231900	3	381/-	-	-
12.	Nov.96	01.01.97	2	30/1.1.97	303600	2	333/-	-	-
13.	Feb.97	31.03.97	1	1836/31.3.97	323400	1	177/-	-	-
14.	Jan.95	02.08.95	3	89/2.8.95	276300	3	454/-	-	-
15.	July.95	31.08.95	1	2057/31.8.95	179400	1	98/-	-	-
16.	Sept.95	31.10.95	1	1602/31.10.95	339300	1	136/-	-	-

6. Since the petitioner failed to make payment of the Foreign Travel Tax collected within the specified period and also failed to file monthly returns and placing their manifest within time, the Assistant Commissioner of Customs, FTT Department, Sahar International Airport, Bombay issued show cause notices to the petitioner. The petitioner submitted their reply. It was submitted that on few occasions, the delay occurred because the last day of the submission of return and payment happened to be Sunday. It was the case of the petitioner that there was neither any intention to evade the tax nor was there any intention in submitting the monthly returns and the payments belatedly.

7. On 3rd November, 1999 the Deputy Commissioner of Customs, FTT Department passed a common order and imposed penalty of Rs.70,000/- in regard to 14 cases in late payment of Foreign Travel Tax and penalty of Rs.20,000/- in case of late submissions of returns with the warning to be more careful in future.

8. The petitioner challenged the order dated 3rd November, 1999 by filing an appeal before the Commissioner of Customs. The Commissioner of Customs (Appeals) upheld the order of the Original Authority.

9. The petitioner then filed revision application before the Government of India against the order in appeal dated 8th January, 2003.

10. The Government of India vide its order dated 18th March, 2004 set aside the order in appeal dated 9th January, 2003 and also the order-in-original dated 3rd November, 1999. The Government of India remanded the matter back to the Original Authority by the following directions.

> "In the circumstances Government is constrained to set aside the orders passed by the lower authorities and remand back the matter to the original authority to decide the matters afresh after hearing the applicant."

11. After the remand, the matter was reconsidered by the Assistant Commissioner of Customs and by the order passed on 2nd November, 2004 imposed a penalty of Rs.7,59,060/- under Section 38(3) of the Finance Act, 1979. The Original Authority also imposed a minimum penalty of Rs.32,000/- for 16 cases under the provisions of Rule 10A(1) of Foreign Travel Tax, 1979 and penalty Rs.29,000/- for late submission of

monthly returns by 58 days. The Original Authority also confirmed the amount of interest at the rate of 20% per annum from the date of demand and penalty levied under Section 35(a) of the Finance Act, 1979 and same was adjusted from the collection charges paid during the financial year 1997-98.

12. Aggrieved by the order dated 2nd November, 2004 passed by the Original Authority, the petitioner preferred an appeal before the Commissioner of Customs (Appeals). The said appeal came to be dismissed on 1st April, 2005. The petitioner then carried the matter to the Government of India in revision under Section 129DD of the Customs Act, 1962. The said revision application was dismissed by the order dated 22nd November, 2005. Hence, this petition.

13. That the petitioners were required under the Foreign Travel Tax (Amendments) Rules, 1979 as amended in 1994 to collect Foreign Travel Tax (FTT) from their passengers and pay the said tax collected in any month into Treasury within 30 days from the end of that month and also file a passenger manifest in respect of any month before the expiry of 30 days from the end of that month and the return in Form II showing particulars of flights operated is not in

dispute. The statement showing details of FTT returns and payments that we have reproduced above shows that for the period August, 1994 to February, 1997, the petitioner committed default 16 times in submitting the FTT returns in time and 14 times in making the payment of the tax collected in time. This clearly indicates that during that period the petitioner did not act in accordance with Foreign Travel Tax (Amendment) Rules, 1979 as amended in 1994 in filing the returns and payment of the tax collected from the passengers within the time required in law. For imposition of penalty under Section 38(3) of the Finance Act, 1979 or Rule 10A(1) of FTT, 1979, intention of delayed payment of tax on the part of the petitioner is not necessary. Mens-rea is not sine-qua-non to the imposition of penalty under Section 38(3) of the Finance Act, 1979 or Rule 10A(1) of FTT, 1979. The petitioner made itself liable to the penalty as soon as the default in filing the timely returns and the payment of tax collected was made. In this view of the matter, the contention of the learned counsel for the petitioner that the delay was not intentional or that there was no mens-rea on the part of the petitioner has no relevance.

14. It is clear from the order passed by the

Government of India that a minimum penalty has been imposed under Section 38(3) of the Finance Act and so also under Rule 10A(1) of the FTT, 1979. The discretion, thus, has been exercised by the authorities in favour of the petitioner by levying a minimum penalty under the aforesaid statutory provisions.

15. From the perusal of the remand order dated 18th March, 2004 it is clearly seen that while setting aside the orders of the authorities below (order-in-original and order-in-appeal) and remanding the matter back to the Original Authority, the Government of India directed the Original Authority to decide the matter afresh after hearing the petitioner. The remand was ordered to enable the Original Authority to ascertain whether the show cause notice issued to the petitioner was within six months from the relevant date, as per provisions of Section (1) of Rule 10A of FTT, 1979. Having held that the notice was issued within time and that there was delay on the part of the petitioner in depositing the Foreign Travel Tax collected in time and filing the returns, the penalty was imposed. In these circumstances, therefore, it cannot be said that the impugned order travels beyond the order of remand dated 10th March, 2004.

16. We find no merit in the writ petition. It is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)